

In re:) Case No. BK-N-11-53860 (BTB)
) Chapter 11
AHERN RENTALS, INC.,)
)
Debtor.)
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AHERN RENTALS, INC.) USDC Case No.:
) 3:12-cv-00676-LRH-VPC
Appellant,)
v.)
)
GOLDMAN SACHS PALMETTO STATE CREDIT)
FUND, L.P., LIBERTY HARBOR MASTER FUND)
I, L.P., SPHERE CAPITAL, LLC – SERIES B, DEL)
MAR MASTER FUND LTD., FEINGOLD O’KEEFFE)
CAPITAL MANAGEMENT, LLC, NOMURA)
CORPORATE RESEARCH & ASSET MANAGEMENT)
INC., OCH-ZIFF CAPITAL MANAGEMENT GROUP,)
WAZEE STREET CAPITAL MANAGEMENT, LLC,)
)
Appellees.)
)

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Ahern Rentals, Inc. (the “Debtor” or “Appellant”), by and through its undersigned counsel, respectfully moves this Court (the “Motion to Modify Stay Order”),¹ on an emergency basis, for an order substantially in the form attached hereto as Exhibit A (the “Modified Order”), modifying the order entered by this Court on December 21, 2012 (the “Stay Order”), (Docket No. 5), which stayed the *Order Terminating the Debtor’s Exclusive Period Pursuant to 11 U.S.C. § 1121(d)* (Ex. 55, the “Termination Order”).² The Termination Order terminated the Debtor’s exclusive period for filing a plan of reorganization (the “Exclusive Plan Filing Period”) as well as the Debtor’s exclusive period for soliciting acceptances with respect to the plan of reorganization (the “Exclusive Plan Solicitation Period,” and together with the Exclusive Plan Filing Period, the “Exclusive Periods”). In support of its Motion to Modify Stay Order, Appellant respectfully states as follows:

1. On December 20, 2012, Appellant filed its *Emergency Motion of Debtor for Stay Pending Appeal of Order Terminating Exclusivity* (the “Stay Motion”). (Docket No. 1)

2. On December 21, 2012, this Court entered the Stay Order. (Docket No. 5)

3. Appellant respectfully submits that paragraph 2 of the Stay Order, which currently reads “The Chapter 11 Case is stayed effective as of December 7, 2012,” might be interpreted to have an effect not desired by the relief requested in the Stay Motion.

4. Appellant respectfully submits that to clarify the intent of the Stay Order, paragraph 2 of the Stay Order should be amended to read as follows: “The proceedings of the Chapter 11 Case, as related to the Exclusive Periods, the Debtor Plan and any competing plans, are stayed effective as of December 7, 2012.”

¹ Unless otherwise indicated, all references herein to “Ex. ____” are to the *Debtor’s Appendix of Exhibits and Excerpts of Record*, filed substantially contemporaneously herewith. All references to “Docket No. ____” are to the docket in the case currently pending before this Court. All capitalized terms used in this Motion to Modify Stay Order but not otherwise defined herein shall have the meanings ascribed to such terms in the *Debtor’s Plan of Reorganization*, dated and filed on November 30, 2012 (Ex. 46, together with any amendments or supplements thereto, the “Debtor Plan”).

² Bankruptcy Rule 8002(a) provides that a notice of appeal shall be filed within fourteen (14) days of the date of entry of the order appealed from. Fed. R. Bankr. P. 8002(a). Where, as here, a notice of appeal is filed after the announcement of the Bankruptcy Court’s decision to enter the Termination Order but before entry of the Termination Order, such notice of appeal shall be treated as filed after such entry and on the day thereof. Fed. R. Bankr. P. 8002(a).

1 WHEREFORE, Appellant respectfully requests that this Court (i) enter the Modified
2 Order attached hereto as Exhibit A; and (ii) grant Appellant such other and further relief as is just
3 and proper.

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5 Dated: December 21, 2012

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7 By: /s/ Matthew C. Zirzow

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